

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Citizens Utility Board,)	
Citizen Action/Illinois,)	
and AARP)	
)	
vs.)	
)	Docket No. 08-0175
Illinois Energy Savings Corp.,)	
d/b/a U.S. Energy Savings Corp.)	
)	
Complaint pursuant to)	
220 ILCS 5/19-110 or 19-115)	

RESPONSE TO COMPANY’S MOTION FOR EXTENSION OF TIME

NOW COMES Staff (“Staff”) of the Illinois Commerce Commission (“Commission”), by and through its attorneys, and pursuant to Part 200.190 of the Commission’s Rules of Practice, submits this Response to Illinois Energy Savings Corp.’s d/b/a U.S. Energy Savings Corp. now d/b/a Just Energy (“Just Energy” or “Company”) Motion for Extension of Time filed on April 30, 2010 (“Motion”).

In its Order entered on April 14, 2010, the Commission ordered that an independent audit be performed on the Company’s sales program, “with a focus on hiring, training, solicitation, procedures and performance, targeting of specific communities and demographics... compensation, sales verification, complaint tracking and reporting, discipline, and other compliance practices.” (Order, p. 49) The independent audit is also intended to focus on the Company’s “commitment of resources to the management of sales and marketing staff, and its managerial resources to the management of sales aspects” of the Alternative Gas Supplier Law. (*Id.*)

Regarding the audit, the Commission specifically stated, “The Company will propose three auditors to the Commission for consideration within two weeks of the date of this Order.” (*Id.*, p. 50) Staff is to make a recommendation regarding the auditor in the form of a Staff Report; the auditor and the audit contract must be then specifically approved by the Commission. Only after the auditor has been approved will an audit plan be developed by the Company, Staff, and the auditor. Pursuant to the Order, this audit is to commence no later than June 1, 2010.

In its Motion, the Company proposed two auditors, rather than the three auditors required by the Commission’s Order, explaining that the Company contacted four audit companies and only obtained two companies that were willing and available to perform the audit. (Motion, pp. 1-2) The Company does not admit that its actions are a failure to comply with the Commission’s Order, rather, it suggests that it was only “required to identify possible auditors” pursuant to the Order and that it complied with the Order by notifying “Commission Staff of the four auditors it proposed for the project in compliance with the Order.”¹ (*Id.*) In Staff’s view, the Company’s interpretation of its duties under the Order is incorrect and indicates a disregard for the plain meaning of the Commission’s Order. The Company wrongly suggests that the Order simply required the Company to provide possible auditors – whether they were available or not. The Order states that the “Company will propose three auditors to the Commission **for consideration**” (emphasis added); nowhere does it state that the Company will submit three possible or proposed auditors. Nor is it logical to suggest, as the Company’s interpretation would require, that the Commission wanted to waste the time of Staff or

¹ Staff finds it peculiar that the Company notified Staff of its proposed auditors by way of a letter addressed to ALJ Gilbert (see Exhibit A to its Motion).

the Commission itself by considering auditors that were not available to perform this audit. The Company's argument, if correct, would mean that the Company could have randomly plucked the names of three auditors from the phonebook and provided them to Staff and that this would have been enough to comply with the Commission's Order. Staff highly doubts that this interpretation of the Order was contemplated or intended by the Commission.

The Company further argues that Staff, by requesting that the Company comply with the Order, by providing the name of a third auditor, was in fact exercising its right under the Order to request additional audit companies beyond those proposed by the Company initially. (Motion, p. 2) When Staff Counsel contacted Company's Counsel on April 30, 2010, the purpose was not to ask the Company to provide an additional proposed auditor; instead, the purpose was to inform the Company that it needed to comply with the Commission's Order because, in Staff's view, the Order required the Company to submit three auditors. To the extent that the Company is implying that Staff's request to provide a third auditor is an exercise of Staff's right to "seek additional audit firms if the company's proposed auditors are unavailable or unacceptable" (see Order, p. 50), Staff disagrees with this implication. Staff interprets the Order to mean that only after the Company has proposed three auditors and they subsequently become unavailable or unacceptable, then Staff has the right to seek additional firms. An auditor's unavailability at the time the Company submits it to Staff does not make the auditor viable or subject to consideration. The Order specifically states, "The company will propose three auditors to the Commission **for consideration** within two weeks of

the date of this Order.” The Commission cannot possibly consider an unavailable auditor.

In addition, the Company readily admits that it had only solicited four firms and had only received two bids for this audit. (Motion, p. 1) The Commission gave the Company two weeks to propose three auditors and the Company has failed to do this. Proposing three auditors, in Staff’s opinion, does not mean providing four proposals, two of which are knowingly unavailable at the time of submission. The Company should have made a good faith attempt to secure three available auditors; Staff believes that soliciting only four firms for proposals does not constitute good faith. Staff also believes that the Company should not have waited until two days after the submission deadline to ask the Commission for more time to secure a third proposal. Had the Company suspected it could not meet the two week deadline, it should have asked the Commission for more time before the deadline came and went. Instead, the Company is arguing that it has already complied with the Commission’s Order and is only asking for more time to secure a third proposal because Staff has insisted on a third auditor. If the Company honestly believed that it had complied with the Commission’s Order by providing to Staff four proposals (two of which were knowingly unavailable), it would not have asked the Administrative Law Judge to confirm whether the Commission deemed it advisable to obtain a third auditor by stating, “Just Energy has not had an opportunity to solicit a bid from another firm, but will do so if the Commission deems it advisable.” (see Motion, Exhibit A)

Also in its Motion, the Company is asking for an additional 14 days to propose a third auditor. This will mean that the Company will have had over four weeks to

comply with the Commission's Order. Furthermore, as it currently stands, commencing an audit by June 1, 2010 will be extremely difficult. If this Motion is granted by the Commission, each day given to the Company to propose a third auditor will confine Staff in its ability to review the submitted proposals and to recommend an auditor to the Commission for approval. This delay will further limit Staff's ability to effectively develop an audit plan for an audit to realistically commence on June 1, 2010.

If the Commission grants this Motion, Staff recommends that the Commission also extend the commencement date of the audit by a reasonable amount of time. An audit cannot realistically commence on June 1, 2010, if an additional 14 days are given to the Company to propose a third auditor. This would require a Staff review of proposals and a Staff recommendation, approval by the Commission of the auditor and contract, and the development of a comprehensive audit plan in less than two weeks.

In its Motion, the Company goes on to state that the Order does not require it "to file its proposed auditors or the auditors' written proposals and to provide notice to other parties like Citizens Utility Board ("CUB") in the same manner that USESC does for pleadings or motions." (Motion, p. 1, fn 1) Staff agrees that it is Staff's role to evaluate the auditors and to provide a recommendation to the Commission and that no party, the Company nor CUB is entitled, as a matter of right, to Staff's evaluation. That said, although the Commission may or may not choose to make Staff's evaluation public, the Company does not have the right to unilaterally deny the public information the Commission may deem relevant or in the public interest.

Furthermore, in Staff's view, the names of the proposed auditors, the auditor proposals, the audit plan, and any reports, especially the final audit report, should be

made public.² If the final audit report was confidential, Staff would be prohibited from disclosing the results of the audit to determine whether the Company has complied with the Order's corrective measures. This lack of transparency goes against the public interest in general, and specifically against the goals of the Commission's Order in requiring the Company to undergo an audit as a corrective measure.

To the extent any of this information or any such documents contain confidential information, the Company should petition the Commission seeking the protection of confidential information under Section 4-404 of the Public Utilities Act. Staff notes that CUB and the Company remain bound by the provisions of the Protective Order previously entered in this case.

WHEREFORE, Staff respectfully requests that the Commission consider this Response in granting the Company an extension of time.

Respectfully submitted,

/s/
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May 4, 2010

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² Staff does agree that the personal biographical information about the individuals performing the audit (e.g., their former employers or alma maters), as well as information the auditor itself deems proprietary (e.g., analysis methods or programs) should be treated as confidential.